

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LARRY GENE HEGGEM,

Plaintiff,

v.

HELENE C. BLUME, *et al.*,

Defendants.

No. C07-1143RAJ-MAT

ORDER

This matter comes before the Court under Local General Rule 8(c). Plaintiff has filed a request that the Honorable Mary Alice Theiler, United States Magistrate Judge, be removed from the above-captioned matter. Dkt. # 66. Magistrate Judge Theiler declined to recuse herself voluntarily. Dkt. # 70. Plaintiff's motion is therefore ripe for review by this Court.

Section 455 of title 28 of the United States Code governs the disqualification of a judge. It states in relevant part: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such

ORDER

1 proceeding. The affidavit shall state the facts and the reasons for the belief that
2 bias or prejudice exists.

3
4 A judge must recuse himself if a reasonable person would believe that he is unable to be
5 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993).

6 Having reviewed the record, the Court finds that there is no evidence of bias or
7 prejudice against plaintiff or in favor of the defendants in this case. Plaintiff's sole allegation is
8 that Judge Theiler has occasionally confused the defendants in three separate lawsuits filed by
9 plaintiff between July 2007 and January 2008. Plaintiff asserts as follows:

10
11 On 5-8-08, Judge Theiler sent back a discovery request that I (plaintiff) submitted
12 to defendant William Steffener in my case Heggem v. Blume [C07-1143RAJ-
13 MAT], but stating in her letter that it was an interrogatory prematurely submitted
14 on defendant Mathern, which was not premature because discovery had already
15 been ordered by Judge Theiler regarding Heggem v. Mathern [C07-1012MJP-
16 MAT]. Judge Theiler also got defendant Steffener mixed up with a defendant of
Mathern's case last year.

17
18 Dkt. # 66. Plaintiff's allegations are not supported by the record. By Minute Order dated May
19 15, 2008, the clerk returned plaintiff's interrogatories not because they were premature, but
20 because such discovery requests are not supposed to be filed with the Court unless and until they
21 are used in the proceeding or the Court directs otherwise. Heggem v. Mathern, C07-1012MJP-
22 MAT at Dkt. # 47. The interrogatories were specifically addressed to defendant Mathern,
23 making the deputy clerk's reference to her entirely appropriate. Plaintiff has not provided
24 sufficient information to determine whether defendant Steffener was confused with another
25 defendant last year. Even if such an error occurred, it has nothing to do with Judge Theiler since
26

1 she did not participate in Heggem v. Blume, C07-1143RAJ-MAT, until February or March of
2 2008.

3
4 Assuming, for purposes of this motion, that occasional misidentifications occurred,
5 it would be impossible to conclude that such seemingly inconsequential errors were the result of
6 bias or prejudice against plaintiff. Having reviewed plaintiff's motion and the records in his
7 three pending cases, the Court finds that Judge Theiler's impartiality cannot reasonably be
8 questioned . There being no evidence of bias or prejudice, plaintiff's request to remove Judge
9 Theiler from this matter is DENIED.

10
11 Dated this 10th day of June, 2008.

12
13 

14 Robert S. Lasnik
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26